IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1044 OF 2005

Shri Laxman Rambhau Chondhe & anr. ... Appellant

V/s

Shri Eknath Rambhau Chondhe ... Respondent

Mr. S.J. Rairkar for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 21ST SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Pune, decreeing the plaintiff's suit for perpetual injunction against the defendants with direction not to obstruct possession of the plaintiff over the suit land Survey No. 316/7 admeasuring 29 gunthas situated at village Bhugaon, Tal. Mulshi, Dist. Thane.

3. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for perpetual injunction against the defendants on the ground that the possession in the suit property of Survey No.316/7 admeasuring 29 gunthas and 7 mango trees was disturbed by the defendants. The plaintiff and defendants are brothers inter-se. The suit land was the joint family consisting of the plaintiff and defendants. One Rambhau Bhiwa Chondhe was their father who died on 23.2.1987 leaving behind 4 sons i.e. the present plaintiff, defendants and one Mhasku. It is further alleged that the partition of the joint family property was effected on 23.2.1993 and accordingly the mutation entry No.256 was effected and their names were recorded to the concerned properties of respective shares and the suit land was allotted to the share of plaintiff and he is in exclusive possession of it since the said partition. The defendants are not concerned with the suit land and inspite of that his possession has been threated and caused obstruction. Hence the suit is filed.

4. Defendants contested the suit denying all the allegations and submitted that there is confusion of the survey records and the land of Survey No.316/7 and that the suit property was in fact Survey No.316/4 and, as

such the suit property cannot be properly identified and, therefore, the suit on the basis of that aspect cannot be maintainable and on such and other grounds the suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff has proved his lawful possession over the suit property. The description of the suit property is also held to be correctly mentioned in the plaint. It was further held that the defendants failed to prove that there was any confusion in the identity of the property and, as such, the suit came to be decreed by perpetual injunction.

The appeal was carried to the District Court at Pune. The learned Addl. District Judge, after hearing both sides, concurred with the findings recorded by the learned Trial Judge holding that the plaintiff had proved his exclusive possession in the suit land as well as obstruction by the defendants to his possession and hence decree was confirmed and appeal was dismissed. Hence the present appeal.

6. At the outset, it may be noted there is absolutely no substantial question of law involved in this appeal.

Once it is established that there were partitions between the parties and land of Survey No. 316/7 admeasuring 29 Ares was allotted to the share of the plaintiff, while Survey No.316/4 admeasuring 31 Ares was allotted to the share of defendants 1 and 2 jointly, then there would not be any question of identity of the property because consequent to the deed of partition mutation entries were made and since then parties are in their respective possession of their properties. The learned counsel for the appellant vehemently urged that the oral evidence led on his behalf was sufficient to show that there was confusion with regard to the actual holding of the properties and in fact sub-survey No.7 was of Survey No.316 and, therefore, both the courts below have erred in holding that the suit property is properly identified. In this regard it must be noted that the oral evidence cannot be held sufficient to discard the record of right entries especially when those are seen to be based on partition deed, whereby the plaintiff is given possession of his share to the extent of 29 Ares of land. It was further urged that, inspite of his request for appointment of the Court Commissioner in order to identify the property, the learned Trial Judge did not appoint the Court Commissioner so as to remove the confusion in this

regard. However, in my considered view, when the available documentary evidence was held to be sufficient for effective adjudication of the matter, the rejection of the defendants' application for appointment of the Court Commissioner cannot be held to be perverse in any manner whatsoever.

7. In the result, I have no doubt whatsoever that the concurrent findings recorded by both the Courts below are just, legal and proper and, therefore, would brook no interference.

In the result, the appeal stands dismissed with no order as to costs.

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